

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LAWRENCE P. NOVAK,

Plaintiff,

vs.

STATE FARM FIRE & CASUALTY CO.,

ET. AL.,

Defendants.

Case No. 4:05CV1907SNL

ORDER

Plaintiff originally filed this breach of insurance contract action in the Circuit Court for the City of St. Louis on January 15, 2005. On or about October 19, 2005 defendant State Farm removed this action to federal court on the basis of diversity jurisdiction wherein it was assigned to this Court. This matter is before the Court on the plaintiff's motion for remand (#5), filed November 17, 2005. Defendant has filed a responsive pleading.¹

In his motion, plaintiff provides two (2) grounds for remand: 1) defendant State Farm's removal is untimely because (former) defendant James Sortor was a resident of the State of Illinois at time of the filing of this action; and therefore, complete diversity² existed as of January 2005; and 2) defendant State Farm has failed to "prove" that defendant Mary Novak is not a

¹On November 28, 2005 defendant State Farm filed two (2) responsive pleadings, Documents #6 and #7. Both documents, although different in format, are identical in argument; the only difference being that the affidavit of (former) defendant James Sortor and a copy of a "Plaintiff's Motion for Issuance of Pluries Summons and Appointment of Special Process Server (originally filed in the state court) are attached to Document #7.

²There appears to be no dispute that this action involves a claim for damages in excess of \$75,000.00.

resident of Missouri (and presumably complete diversity does not now exist). Defendant State Farm counters that complete diversity did not exist at the time of the filing of the complaint because (former) defendant James Sortor is a long-time resident of Missouri, **not Illinois**. In support of this argument, defendant has provided the affidavit of (former) defendant James Sortor attesting to the fact that his is the insurance agent who sold the subject policy to plaintiff; and furthermore, has resided in Chesterfield, Missouri for approximately seventeen (17) years. *See*, Exhibit A attached to Defendant's Reply (Document #7). State Farm argues that complete diversity did not exist until plaintiff dismissed James Sortor from this litigation on October 17, 2005. State Farm further argues that plaintiff himself has asserted in pleadings before the state court that defendant Mary Novak "resides at 4311 S. Semoran #5, Orlando, Florida, 32822, in Orange County." *See*, Exhibit B attached to Defendant's Reply (Document #7). After a failed attempt at service at this address and being informed "by someone at that address, Defendant, Mary E. Novak, did not reside there", plaintiff hired a special process server who searched for a new address for said defendant. "The results of that search indicate Defendant, Mary E. Novak, does still live at this address **[the Orlando, Florida address]**". Exhibit B. Finally, plaintiff's Request for Pluries Summons" filed with the state court lists defendant Mary E. Novak as "4311 S. Semoran #5, Orlando, FL 32822". Exhibit B.


After careful consideration of the matter, and review of the submitted pleadings and exhibits, the Court will deny the motion to remand. It is clear that complete diversity did not exist until (former) defendant James Sortor was dismissed from this case. Since plaintiff has not filed any evidence of service upon this defendant at the alleged address in Illinois, the Court finds that (former) defendant James Sortor was a resident of the State of Missouri at the time of the filing of this complaint. The Court further finds that Mary E. Novak, for purposes of diversity jurisdiction,

is a resident of Florida. Again, plaintiff has provided no evidence that this defendant was ever served at “her residence” in the State of Missouri. Since plaintiff is a resident of Missouri, defendant is a resident of Illinois, and defendant Mary E. Novak is a resident of Florida, and there is no dispute that the alleged damages are in excess of \$75,000.00, complete diversity exists.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion for remand (#5) be and is **DENIED**.

Dated this 8th day of December, 2005.



SENIOR UNITED STATES DISTRICT JUDGE